

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
December 20, 2005 Session

**TIMOTHY HODGES v. STATE OF TENNESSEE**

**Appeal from the Circuit Court for Robertson County**  
**No. 05-0136     John H. Gasaway, III, Judge**

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**No. M2005-01347-CCA-R3-HC - Filed February 23, 2006**

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The State appeals the grant of habeas relief, contending that the habeas court went beyond its authority in determining that Wisconsin did not have personal jurisdiction over the petitioner in an action to extradite him for a criminal charge of intentionally failing to support his children. Upon review, we conclude that the petitioner was properly classified as a fugitive and further agree that the habeas court's findings went beyond the scope of permissible inquiry. Therefore, we reverse the grant of habeas relief.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed**

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

Paul G. Summers, Attorney General and Reporter; Mark A. Fulks, Assistant Attorney General; John Wesley Carney, Jr., District Attorney General; and Jason White, Assistant District Attorney General, for the appellant, State of Tennessee.

Charles W. Cross, Nashville, Tennessee, for the appellee, Timothy Hodges.

**OPINION**

Facts and Procedural History

\_\_\_\_\_ This appeal arises from a grant of habeas relief from a governor's warrant extraditing the petitioner, Timothy Hodges, to Wisconsin where he had been indicted on four counts of intentionally failing to support his children. See Wis. Stat. Ann. § 948.22(2). In November 2003, the Dane County, Wisconsin Criminal Court issued an arrest warrant and requisition seeking extradition of the petitioner from Tennessee, his home state, to Wisconsin. As a result, Tennessee Governor Phil Bredesen granted extradition in March 2005.

One month later, the petitioner filed a habeas corpus petition in the Robertson County, Tennessee Circuit Court seeking dismissal of the governor's warrant based upon Wisconsin's lack of personal jurisdiction over him.<sup>1</sup> In response, the State asserted that the request for extradition stemmed from criminal charges in Wisconsin rather than from a civil action to enforce child support orders.<sup>2</sup> After hearing the matter, which consisted only of arguments from the petitioner's counsel and the State, the habeas court granted relief, finding that "the [petitioner] had no personal contact with Wisconsin such as would allow his prosecution under the due process clause of the United States Constitution; there was no in personam jurisdiction of the [petitioner]." This appeal by the State subsequently ensued. Upon thorough review, we conclude that the habeas court's findings were in error and, accordingly, reverse the grant of relief.

### Analysis

A governor's grant of extradition is prima facie evidence that both the constitutional and statutory requirements for interstate extradition have been satisfied. Michigan v. Doran, 439 U.S. 282, 289, 99 S. Ct. 530, 535 (1980). Therefore, once granted, a habeas court's review is limited to the following issues:

- (1) Whether the extradition documents on their face are in order;
- (2) Whether the petitioner has been charged with a crime in the demanding state;
- (3) Whether the petitioner is the person named in the request for extradition; and
- (4) Whether the petitioner is a fugitive.

Id.

Of these, the only cognizable issue raised by the petitioner in the habeas proceeding was whether he was a fugitive as he has no contacts with the State of Wisconsin (though we note that this is part of the problem). This, however, is itself speculative as the petitioner couched his argument in terms of a lack of personal jurisdiction.<sup>3</sup> Nonetheless, assuming that the petitioner did contest his status as a fugitive, we must disagree with the habeas court's determination that relief was warranted.

Traditionally, Article IV, Section 2 of the United States Constitution required the demanding state to demonstrate the accused's fugitive status by showing that he or she was actually present at the time of the offense and subsequently fled. Hyatt v. People ex rel. Cockran, 188 U.S. 691, 711-12, 23 S. Ct. 456, 458-59 (1903). The courts reasoned that, in order to flee, the accused must first be present in the demanding state. However, it was later "recognized that by agreement the states

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<sup>1</sup> The petitioner contends that he has never been to Wisconsin.

<sup>2</sup> The record reflects that the Davidson County, Tennessee Juvenile Court had previously issued an order which indicated that it had "exclusive and original jurisdiction over the father and child support matters and should retain jurisdiction over the father and children for support matters and to enforce this Court's prior order."

<sup>3</sup> In Behr v. Ramsey, 230 F.3d 268 (7<sup>th</sup> Cir. 2000), cert. denied, 531 U.S. 1176 (2001), the Seventh Circuit held, in reliance on Doran, that personal jurisdiction is not cognizable in a habeas corpus petition in the asylum state but is to be taken up by the courts of the demanding state. We agree.

were free to define who is a fugitive from justice and to extradite such fugitives on the basis of state law.” Earhart v. Hicks, 656 S.W.2d 873, 875 (Tenn. Crim. App. 1983) (citing Ex parte Innes, 173 S.W. 291 (Tex. Crim. App. 1915), aff’d, 240 U.S. 127, 36 S. Ct. 290 (1916)).

In 1951, Tennessee followed the majority of jurisdictions in adopting the Uniform Criminal Extradition Act (UCEA), which requires the governor to extradite an accused who is charged with a crime in another state, who has fled from justice; and who is found in this state. See T.C.A. § 40-9-109. This mandate is subject to the demanding state showing:

- (1) The accused’s presence in the state at the time of the offense, and that the accused thereafter fled, or that the accused meets the requirements of section 40-9-113;
- (2) The accused is presently in the state; and
- (3) The accused is lawfully charged by a prosecuting officer, supported by an affidavit of facts, or by affidavit before a magistrate in the demanding state, having committed a crime under the demanding state’s law, or having been convicted of a crime under the demanding state’s law, and having effected an escape or broken parole.

T.C.A. § 40-9-112.

In the present case, section 40-9-113 is applicable and provides that:

The governor of this state may also surrender, on demand of the executive authority of any state, any person in this state charged in such other state in the manner provided in § 40-9-112 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, notwithstanding that the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

T.C.A. § 40-9-113.

The aforementioned requirements are satisfied if, after reviewing the demand, charge, and supporting papers, it is determined that the demanding state substantially complied by showing that “[the accused] was outside the demanding State and committed an act while away from that State, or in this, or in another State, which intentionally resulted in a crime being committed in the demanding state. . . .” Earhart, 656 S.W.2d at 877.

\_\_\_\_\_ We note that the petitioner was not being held in the Robertson County jail under the authority of a Wisconsin arrest warrant. He was being held under the authority of an extradition warrant issued by the Governor of Tennessee. We emphasize that the issue of whether the facts will support the prosecution and/or conviction of the petitioner in Wisconsin is not before this court.

\_\_\_\_\_ Upon review of the record, we initially note that only the charging document and the Wisconsin warrant are contained therein. However, the former sets forth the alleged offenses under Wisconsin law and further recites that the Davidson County, Tennessee Juvenile Court ordered

child support payments which, it alleged, had not been paid since July 1, 2002. Although the document does not specifically state that the accused committed the criminal act while in Tennessee, it is clearly implied, and we are inclined to find substantial compliance with the extradition requirements. See id. at 877 (“[I]n extradition matters the courts should not ‘discharge the accused upon technical grounds . . . unless it be clear that what was done was in plain contravention of law.’”).

Likewise, we conclude that the absence of the requisition from the record does not mandate the accused’s release. See id. at 877-78 (In the absence of the requisition from the record, it is presumed that the demanding state’s governor acted in conformance with the documentation requirements.”). For these reasons, we conclude that the accused was properly classified as a fugitive under Tennessee law and, therefore, none of the four issues cognizable in a habeas petition of this nature merited relief. As to the habeas court’s ruling upon Wisconsin’s personal jurisdiction over the petitioner, we conclude that it made a preliminary inquiry that was beyond that allowed by Doran. As such, the grant of habeas corpus relief was in error and is reversed.

#### Conclusion

We reverse the grant of habeas relief.

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JOHN EVERETT WILLIAMS, JUDGE